



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
HECTOR ROZO,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.
-----x

10 Civ. 7664 (JSR)

ORDER

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JED S. RAKOFF, U.S.D.J.

On November 19, 2002, petitioner Hector Rozo pled guilty to conspiracy to distribute a controlled substance in violation of 21 U.S.C. § 846. On February 28, 2003, the Court sentenced him to 188 months' imprisonment, followed by 60 months of supervised release.

On July 22, 2010, the pro se office received from petitioner a "Motion Pursuant Federal Rules of Criminal Procedure Rule 35, 18 U.S.C.A." The Court construed this submission as a habeas petition pursuant to 28 U.S.C. § 2255, and subsequently entered a 60-day Order on October 6, 2010 directing petitioner to submit an affirmation showing cause why the statute of limitations should not bar his motion. Petitioner submitted an affirmation dated October 20, 2010, which was filed on October 26, 2010.

The Court has carefully considered petitioner's submissions, and concludes the petition is barred by the statute of limitations. Accordingly, the motion/petition is denied, and the Clerk of the Court is directed to enter final judgment and close item 3 on the docket of this case. In addition, because petitioner has not made a

substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253. Moreover, the Court certifies that any appeal from this Order would not be taken in good faith, as petitioner's claim lacks any arguable basis in law or fact, and therefore permission to proceed in forma pauperis is also denied. See 28 U.S.C. § 1915(a)(3); see also Seimon v. Emigrant Savs. Bank (In re Seimon), 421 F.3d 167, 169 (2d Cir. 2005).

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
November 19, 2010